

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK A. SCOTT,

Plaintiff,

vs.

CASTILLO, et al.,

Defendants.

1:20-cv-00598-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION
PROCEED ONLY AGAINST DEFENDANT
C/O CASTILLO FOR USE OF EXCESSIVE
FORCE IN VIOLATION OF THE EIGHTH
AMENDMENT, AND THAT ALL OTHER
CLAIMS AND DEFENDANTS BE
DISMISSED
(ECF No. 1.)**

OBJECTIONS, IF ANY, DUE IN 14 DAYS

Mark Anthony Scott (“Plaintiff”) is a former prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on April 27, 2020. (ECF No. 1.) The Complaint names as defendants Correctional Officer (C/O) David Castillo, Sergeant Justin Anderson, Christian Pfeiffer (Warden), Ralph Diaz (Secretary, CDCR), and a Doe Defendant (C/O) (collectively, “Defendants”), and brings claims for failure to protect, excessive force, false reports, solitary confinement, and state law claims.

1 The court screened the Complaint and found that it states a cognizable claim under the
2 Eighth Amendment against defendant C/O Castillo for use of excessive force in violation of the
3 Eighth Amendment, but no other claims against any of the Defendants. On August 9, 2021, the
4 court issued a screening order requiring Plaintiff to either: (1) file a First Amended Complaint,
5 or (2) notify the court that he is willing to proceed only with the excessive force claim found
6 cognizable by the court. (ECF No. 15.)

7 On August 30, 2021, Plaintiff notified the court that he is willing to proceed only with
8 the claims found cognizable by the court. (ECF No. 16.)

9 Based on the foregoing, the court **HEREBY RECOMMENDS** that:

- 10 1. This action proceed only on Plaintiff's claim against defendant C/O Castillo for
11 use of excessive force in violation of the Eighth Amendment;
- 12 2. All remaining claims and defendants be dismissed from this action;
- 13 3. Plaintiff's claims for false reports, failure to protect, solitary confinement, and
14 state law claims be dismissed from this action based on Plaintiff's failure to state
15 any claims upon which relief may be granted;
- 16 4. Plaintiff's state law claims be dismissed, without prejudice to bringing the claims
17 to state court;
- 18 5. Defendants Sergeant Justin Anderson, Christian Pfieffer (Warden), Ralph Diaz
19 (Secretary, CDCR), and a Doe Defendant (C/O) be dismissed from this action
20 based on Plaintiff's failure to state any claims against them upon which relief may
21 be granted; and
- 22 6. This case be referred back to the Magistrate Judge for further proceedings,
23 including initiation of service of process.

24 These Findings and Recommendations will be submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
26 fourteen (14) days after the date of service of these Findings and Recommendations, Plaintiff
27 may file written objections with the Court. The document should be captioned "Objections to
28 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file

1 objections within the specified time may waive the right to appeal the District Court's order.
2 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: September 23, 2021

/s/ Gary S. Austin
6 UNITED STATES MAGISTRATE JUDGE
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